

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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**In re: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESale PRICE  
LITIGATION**

**THIS DOCUMENT RELATES TO:**

*State of Montana v. Abbott Labs., Inc., et al.*,  
CA No. 02-CV-12084-PBS

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)  
)  
)  
) MDL NO. 1456  
) Civil Action No. 01-12257-PBS  
) Judge Patti B. Saris  
)  
) Chief Magistrate Judge Marianne B.  
) Bowler  
)

**AFFIDAVIT OF MICHAEL DOSS IN SUPPORT OF BAYER'S  
MOTION FOR LEAVE TO FILE A NOTICE OF SUPPLEMENTAL FACTS**

MICHAEL DOSS states on oath that:

1. I am a partner at Sidley Austin LLP and represent Bayer Corporation ("Bayer") in the case of *State of Montana v. Abbott Labs, Inc., et al.*, CA No. 02-CV-12084-PBS, which is part of the multi-district litigation currently pending before the Court captioned *In re: Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456, CA No. 01-12257-PBS.

2. Bayer's First Motion to Compel Plaintiff the State of Montana to Produce a Rule 30(b)(6) Witness (the "Motion") seeks to compel Montana to designate a witness to testify concerning Montana's use of the Average Sales Price ("ASP") data provided by Bayer since 2001 "in evaluating, revising, or setting payments" under Montana's Medicaid Program.

3. On or about June 8, 2006, the State of Montana ("Montana") produced to Bayer for the first time certain ASP-related documents located in the State's files which were responsive to Bayer's January 31, 2006 request for production. (See June 8, 2006 Letter from H. Westre to M. Doss, attached hereto as Ex. A.)

4. Included in this document production on June 8, 2006 was a handwritten comparison of Bayer ASP information to published Average Wholesale Prices (“AWPs”) for every drug Bayer marketed in the second quarter of 2001. A true and correct copy of this comparison chart is attached hereto as Ex. B. (*See* MT 038330-331.)

5. Montana also produced at this time an email from 2001 reflecting its communications with providers of state Medicaid management services concerning the use of Bayer ASP information. A true and correct copy of this email is attached hereto as Ex. C. (*See* MT 038141.)

6. These documents are material to Bayer’s Motion, in that they appear to reflect active evaluation and consideration of Bayer’s ASP information by Montana Medicaid.

FURTHER AFFIANT SAYETH NOT

/s/ Michael Doss

Michael Doss

SIDLEY AUSTIN LLP  
One South Dearborn  
Chicago, Illinois 60603  
(312) 853-7000  
(312) 853-7036

Dated: June 27, 2006

Subscribed and sworn to before me  
this 27<sup>th</sup> day of June, 2006.

/s/ Linda M. Vogel

Notary Public

Linda M. Vogel  
Notary Public, State of Illinois  
My Commission Expires August 15, 2009

# EXHIBIT A



HEATHER M. WESTRE  
DIRECT • (206) 268-9316  
HEATHERW@HBSSLAW.COM

HAGENS BERMAN  
SOBOL SHAPIRO LLP

June 8, 2006

**Via E-Mail & First Class Mail**

Mr. Michael P. Doss  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, IL 60603

Re: Montana AWP Litigation

Dear Michael:

Enclosed you will find the following bates numbered documents: MT 037913 (CD), MT 037965-037974, MT 037993-038026, MT 038058-038068, MT 038082-038113, MT 038141-038142, MT 038188-038251, MT 038264-038413, MT 038428-038439, MT 038473-038506, MT 038520-038580, MT 038594-038626, MT 038650-038672, MT 038692-038696, MT 038719-038728, MT 038753-038867, MT 038918-038950. These Bayer documents were located in the State of Montana's files. They have not been produced to other defendants. Please distribute as your client finds necessary.

Sincerely,

HAGENS BERMAN SOBOL SHAPIRO LLP

A handwritten signature in black ink, appearing to read 'Heather M. Westre'. The signature is fluid and cursive, with the first name 'Heather' being more prominent.

Heather M. Westre  
Assistant to Jeniphr A.E. Breckenridge

Enclosure

# EXHIBIT B

(Exhibit B Has Been Filed Under Seal)

# EXHIBIT C

**Marr, Shannon**

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**From:** Buska, Jeff  
**Sent:** Monday, December 10, 2001 4:18 PM  
**To:** Marr, Shannon  
**Subject:** FW: ASP Implementations

FYI

-----Original Message-----

From: Denmark, Cynthia {mailto:cynthia.denemark@eds.com}  
Sent: Thursday, December 06, 2001 9:16 AM  
To: 'Marvin Hazelwood'; donna.bovell@dc.gov; rowlarm@dhfs.state.wi.us;  
mterrebo@dhhmail.dhh.state.la.us; lfarrand@dhhs.state.nh.us;  
asseyj@dhhs.state.sc.us; jfine@dhhm.state.ma.us; dhillblo@dhs.ca.gov;  
aruggle@dhs.state.ia.us; cdtepper@dhs.state.nj.us;  
ehawkins@dma.state.ga.us; dshepher@dmass.state.va.us;  
rashley@doh.state.ut.us; joeco@dpw.state.pa.us; childsa@dshs.wa.gov;  
wellsj@fdhc.state.fl.us; mshirley@fssa.state.in.us;  
coleenl@govmail.state.nv.us; pavarist@gw.dhs.state.ri.us;  
David\_Campana@health.state.ak.us; mrb01@health.state.ny.us;  
John\_Franklin@hhss.state.ne.us; duerrg@idhw.state.id.us;  
SusanMcCann@mail.medicaid.state.mo.us; Debra.Bahr@mail.state.ky.us;  
lsullivan@mail.tn.state.us; lljones@medicaid.state.al.us;  
mfinch@medicaid.state.al.us; Suzette.Bridges@medicaid.state.ar.us;  
phrrm@medicaid.state.ms.us; benny.ridout@ncmail.net;  
pjeffrey@nt.dma.state.ma.us; reidr@odhs.state.oh.us;  
NesserN@ohca.state.ok.us; james.zakszewski@po.state.ct.us;  
allen.chapman@state.co.us; Mark.Petersen@state.ds.us;  
ed.bauer@state.me.us; kenyonj@state.mi.us; Cody.C.Wiberg@state.mn.us;  
jbuska@state.mt.us; sojoyb@state.nd.us; neal.solomon@state.nm.us;  
Jesse.Anderson@state.or.us; SWHALE@state.wy.us;  
Martha.McNeill@tdh.state.tx.us; paulw@wpgatel.ahs.state.vt.us; Peggy  
King, R.Ph.  
Subject: ASP Implementations

For those state who are using the Bayer ASP, are you adding a percent to the established ASP or are you using the ASP as a definition of ingredient cost?

**MT 038141**

**Confidential**